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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

Adoption of A.M., a Minor.

L.M.,

Petitioner and Appellant,

v.

M.M.,

Objector and Respondent.

E043937

(Super.Ct.No. RIA019240)

OPINION

APPEAL from the Superior Court of Riverside County. Edward D. Webster,  
Judge. Affirmed.

L.M., in pro. per., for Petitioner and Appellant.

Konrad S. Lee, under appointment by the Court of Appeal, for Objector and  
Respondent.

Amanda F. Benedict, under appointment by the Court of Appeal, for Minor.

L.M. (Mother) and her husband, B.B., petitioned the trial court to terminate M.M.'s (Father) parental rights to his son, A.M. (Fam. Code, § 7822.)<sup>1</sup> Mother appeals the trial court's granting of Father's motion for judgment, which Father made following Mother's and B.B.'s presentation of evidence. (Code Civ. Proc., § 631.8.) Mother contends the trial court erred by (1) applying the incorrect legal standard when determining whether the evidence supported a finding that Father intended to abandon A.M., and (2) violating Mother's due process rights by denying her the opportunity to present her case. Father contends Mother does not have standing to bring this appeal. A.M.'s counsel filed a letter brief with this court which takes the position that A.M.'s "interests and wishes were not served by the trial court's ruling." Nevertheless, A.M.'s counsel concludes the court's ruling was made in accordance with the statutory scheme. We affirm the granting of Father's motion for judgment.

#### FACTUAL AND PROCEDURAL HISTORY

In order to avoid repetition, additional facts will be presented in the "Discussion" section, *post*.

Mother and Father married in 1995 and A.M. was born in July 1995. Father is named on A.M.'s birth certificate. During the marriage, Father abused alcohol. Mother obtained a one-year restraining order against Father in 1996, which granted her custody of A.M. Mother and Father divorced in 1998. In December 1998, Father entered the Delancey Street two-year, residential substance abuse program. Father graduated from

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<sup>1</sup> All further statutory references are to the Family Code unless otherwise indicated.

Delancey Street in December 2000. Father regularly paid child support for A.M. beginning in 2001. Mother married B.B. in 2001.

Father filed a request for visitation with A.M. in February 2006. Father had last seen A.M. in July 1997—A.M. believed B.B. was his biological father until January 2007. In October 2006, Father and Mother attended mediation to discuss visitation. Mother agreed that Father should be allowed to establish gradual visitation with A.M. On November 6, 2006, B.B. filed a stepparent adoption request. In the request, B.B. indicated that he would ask the court to terminate Father's parental rights to A.M. On November 22, 2006, B.B. filed the petition to terminate Father's parental rights. On January 5, 2007, Mother moved to be joined as a party so that she could assist in the termination of Father's parental rights. The court granted Mother's motion for joinder. On July 17, 2007, the trial court held a hearing on the petition to terminate Father's parental rights. After B.B. rested his case,<sup>2</sup> Father made a motion for judgment on the basis that B.B. and Mother failed to prove Father abandoned A.M. The court granted Father's motion.

## DISCUSSION

### A. Standing

Father contends Mother does not have standing to bring this appeal. Father argues that Mother's interests were not impacted by the trial court's ruling; Father

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<sup>2</sup> As we will discuss *post*, it is unclear whether B.B.'s attorney was also representing Mother. Accordingly, it is unclear if Mother had also rested.

asserts that only B.B.'s interests were impacted by the ruling, because the trial court denied B.B.'s petition to adopt A.M. We disagree.

Any aggrieved party may file an appeal. (Code Civ. Proc., § 902.) An aggrieved party is one “whose rights or interests are injuriously affected by the judgment [and whose] interest[s are] ““immediate, pecuniary, and substantial and not nominal or a remote consequence of the judgment.”” ( *County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 737.)

Contrary to Father's position, Mother is not appealing a denial of B.B.'s adoption petition. Rather, Mother is appealing the trial court's grant of Father's motion for judgment (Code Civ. Proc., § 631.8) on the petition to terminate Father's parental rights (Fam. Code, § 7822). A mother has standing to bring a petition to terminate a father's parental rights, regardless of whether adoption is the ultimate goal of the parties involved. (*In re Marcel N.* (1991) 235 Cal.App.3d 1007, 1011-1013.) Mother's interests were impacted by the granting of Father's motion, because Mother's position is that A.M. would be provided a more stable and secure home if Father's parental rights were terminated, due to A.M. not knowing about Father until recently. (See *Ibid.*) The granting of Father's motion effectively dismissed the petition to terminate Father's parental rights. Mother's interest in A.M. gave her standing to be a party to the petition and to bring this appeal. In sum, Mother's interests were impacted when the trial court

granted Father's motion for judgment. Therefore, we find Father's argument unpersuasive, and conclude Mother has standing to bring this appeal.<sup>3</sup>

B. Legal Standard

Mother contends the trial court applied the incorrect legal standard when considering whether to grant Father's motion for judgment. We disagree.

We review the trial court's ruling to determine if it abused its discretion by applying the incorrect legal standard. (*In re Hunter S.* (2006) 142 Cal.App.4th 1497, 1507-1508; see also *People v. Knoller* (2007) 41 Cal.4th 139, 156.)

"Under section 7822, a court may declare a child free from a parent's custody and control if the parent has abandoned the child. Abandonment occurs when a 'parent has left the child in the care and custody of the other parent for a period of one year without any provision for the child's support, *or* without communication from the parent, with the intent on the part of the parent to abandon the child.' [Citation.] Thus, a section 7822 proceeding is appropriate where 'three main elements' are met: '(1) the child must have been left with another; (2) without provision for support or without communication from . . . his parent [] for a period of one year; and (3) all of such acts are subject to the qualification that they must have been done "with the intent on the part of such parent . . . to abandon [the child]."' [Citation.]" (*In re Adoption of Allison C.* (2008) 164 Cal.App.4th 1004, 1010, fn. omitted.) Findings under section 7822 must be supported by clear and convincing evidence. (§ 7821.)

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<sup>3</sup> In a motion to dismiss Mother's appeal, Father argues Mother does not have standing. We deny Father's motion to dismiss.

The trial court found that Father's regular payment of child support showed he did not intend to abandon A.M. The trial court emphasized that it found Father did not intend to abandon A.M. "beyond a reasonable doubt." Based on its finding that Father did not intend to abandon A.M., the court granted Father's motion for judgment. (Code Civ. Proc., § 631.8.)

The intent to abandon is a necessary element of section 7822. The trial court based its decision on the finding that Father did not intend to abandon A.M. Accordingly, the trial court applied the correct legal standards. Therefore, we conclude the trial court did not err.

Mother contends the trial court applied the wrong legal standard because it did not consider the best interests of A.M. when ruling on Father's motion. Section 7890 provides that when a court hears a petition to free a child from the custody and control of his parent, "the court shall consider the wishes of the child, bearing in mind the age of the child, and shall act in the best interest of the child." (See also § 7801 [mandating liberal construction of the law in freedom from parental custody and control proceedings "to serve and protect the interests and welfare of the child"].) Nevertheless, in a section 7822 proceeding, the wishes of the child become relevant only if the court finds the child has been abandoned by his parent. (*In re Welch* (1951) 108 Cal.App.2d 466, 474.) In other words, if there is no evidence of an intent to abandon the child, then "the best interests and welfare criteria are simply not applicable." (*In re Baby Boy S.* (1987) 194 Cal.App.3d 925, 933.)

The trial court found that Father did not intend to abandon A.M. Accordingly, the court was not obligated to consider the best interests and welfare of A.M. when ruling on Father's motion, because the finding of abandonment was not made. In sum, the court applied the proper legal standard and did not abuse its discretion.

C. Due Process

1. *Facts*

On January 5, 2007, B.B. filed a motion for joinder. B.B. requested that Mother be joined as a party so that she could assist with the termination of Father's parental rights. In a written response, Father raised no objection to Mother's motion for joinder. On March 1, 2007, Judge Cahraman granted Mother's motion to be joined as a party.

At the hearing on Mother's joinder motion, B.B. referred to his attorney, Ms. Renteria, as "our attorney." The court asked Mother if Ms. Renteria was going to become Mother's attorney of record. Mother responded, "Yes." On April 19, 2007, the trial court again referred to Ms. Renteria as representing both Mother and B.B., and Mother did not correct the court. On July 17, 2007, at the termination hearing, Ms. Renteria entered her appearance on behalf of B.B., but not on behalf of Mother. Mother entered her appearance as "in pro[.] per[.]" Nevertheless, later in the hearing Ms. Renteria referred to Mother as "my client."

At the termination hearing, the following exchange took place between Mother and Judge Webster:

"The Court: [Mother], I'm not going to be allowing you to ask any questions because you can be a witness to testify, but you're not the petitioner in this matter.

“[Mother]: But I am a joinder [*sic*] in the case, your Honor.

“The Court: No, [B.B. is] the petitioner and his attorney will be asking the questions.

“[Mother]: All right.”

Later during the hearing, Ms. Renteria informed the court that Mother’s motion for joinder had been granted by Judge Cahraman. The court explained that it did not have the “caseprint,” and the court concluded that Mother could not be a petitioner in an adoption case because she was already the child’s mother. The court ruled that Mother could testify, but she would not be allowed to question witnesses.

## 2. *Discussion*

Mother essentially contends the trial court violated her rights to due process by denying her the opportunity to present her case. We agree, assuming that Mother was not represented by Ms. Renteria, but find the error to be harmless.

“[D]ue process requires both notice and an opportunity to be heard.” (*In re Kelvin M.* (1978) 77 Cal.App.3d 396, 402.) A party is denied due process if she is prevented from offering any evidence to establish her case. (*Spector v. Superior Court* (1961) 55 Cal.2d 839, 844.) It is unclear from the record whether Ms. Renteria was representing Mother at the termination hearing. It appears that Mother was Ms. Renteria’s client; however, Mother claimed that she was appearing in propria persona. Accordingly, assuming Mother was not being represented by Ms. Renteria, then she was denied an opportunity to be heard. Consequently, Mother’s due process rights were violated.



We review the court's error to determine if it is harmless beyond a reasonable doubt. (*Chapman v. California* (1967) 386 U.S. 18, 24 [error of constitutional dimension is reviewed under a stricter standard]; see also *In re Monique T.* (1992) 2 Cal.App.4th 1372, 1377 [applying same standard to due process violation in a dependency proceeding].)

Mother asserts that she was "unable to present several issues" to the trial court; however, Mother does not explain what the issues are or how they would have impacted the trial court's ruling on Father's motion. Accordingly, Mother has not shown how the court's ruling might have been different if her due process rights were not violated.

Moreover, the evidence that Father did not intend to abandon A.M. is strong. Mother left with A.M. in July 1997. In 1998 or 1999, Father went to Mother's and B.B.'s home to visit A.M., but did not see A.M. at that time. In 1999 or 2000, while Father was in the Delancey Street program, Father gave his mother Christmas gifts to give to A.M. Father wrote four letters to Mother regarding A.M., dated September 2001, October 2001, December 2001 and August 2001. Father spoke to Mother on the telephone "a lot" regarding A.M.; however, we note Mother denied speaking to Father on the telephone. Father paid child support for A.M. from 2001 through December 2006. In January 2007, Mother terminated the child support enforcement action against Father, but Father opposed the termination, so that he could continue to pay child support. Father filed for visitation with A.M. in February 2006. Father explained that he did not request visitation with A.M. until 2006 because Mother told Father that he "would never see [his] son," which made Father very emotional. In October 2006,

Father and Mother attended mediation to discuss visitation. On October 16, 2006, Mother agreed that Father should be allowed to establish gradual visitation with A.M.

The foregoing evidence supports the trial court's finding that Father did not intend to abandon A.M. Father regularly paid child support, opposed Mother's attempt to terminate his child support payments, and stayed in contact with Mother regarding A.M. Father did not communicate directly with A.M.; however, Father's regular support of A.M. is strong evidence that he did not intend to abandon the child.

Accordingly, due to the strength of the evidence, and Mother's failure to explain the issues that she would have presented differently than Ms. Renteria, we conclude the trial court's error was harmless beyond a reasonable doubt.

#### DISPOSITION

The judgment is affirmed.

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/s/ MILLER

J.

We concur:

/s/ HOLLENHORST

Acting P. J.

/s/ KING

J.